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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 22

THE UNITED STATES OF AMERICA, APPELLANT

vs.

FRED HASTINGS

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF MISSISSIPPI

FILED APRIL 12, 1935

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 22

THE UNITED STATES OF AMERICA, APPELLANT

vs.

FRED HASTINGS

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF MISSISSIPPI

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[Caption omitted.]

2 In United States District Court, Northern District of Mississippi, Delta Division

Indictment

Filed January 31, 1935

In the District Court of the United States, in and for Northern District aforesaid, at the January term thereof, A. D. 1935.

The grand jurors of the United States, impaneled, sworn, and charged at the term aforesaid, of the court aforesaid, on their oath present, that Fred Hastings and J. B. Barner, about or on the 9th day of November, in the year 1934 in the Delta division of said district, and within the jurisdiction of said court, at the city of Clarksdale in Coahoma County, Mississippi, did knowingly, wilfully, and unlawfully and without any authority of law, remove and steal from and out of the warehouse of the Federal Compress and Warehouse Company, Clarksdale, Mississippi, being the warehouse of said Federal Compress and Warehouse Company known and designated as Plant No. 2, said warehouse being then and there a duly licensed warehouse under and pursuant to the provisions of the United States Warehouse Act, certain agricultural products then and the there stored and on storage in said warehouse, to wit: a certain bale of cotton identified on the records of said warehouse as bale of cotton number 407784, for which said bale of cotton a licensed warehouse receipt had theretofore been issued by said Federal Compress and Warehouse Company, the removal and stealing of said cotton from said licensed warehouse being then and there contr[illegible] to and in violation of the said United States Warehouse Act [illegible]he regulations promulgated thereunder, contrary to the form [illegible]he statute in such case made and provided, and against the peace and dignity of the United States.

LESTER M. SACK,
Assistant United States Attorney.

3 Second Count

And the grand jurors aforesaid, on their oath aforesaid, do further present, that the said Fred Hastings and J. B. Barner, about or on the 12th day of December, in the year 1934, in the Delta division of said district, and within the jurisdiction of said count, at the city of Clarksdale, in Coahoma County, Mississippi, did knowingly, wilfully, and unlawfully and without any authority of law, remove and steal from and out of the Federal Compress and Warehouse Com-

pany, Clarksdale, Mississippi, being the warehouse of said Federal Compress and Warehouse Company known and designated as Plant No. 2, said warehouse being then and there a duly licensed warehouse under and pursuant to the provisions of the United States Warehouse Act, certain agricultural products then and there stored and on storage in said warehouse, to wit: a certain bale of cotton number 433962, for which said bale of cotton a licensed warehouse receipt had theretofore been issued by said Federal Compress and Warehouse Company, the removal and stealing of said cotton from said licensed warehouse being then and there contrary to and in violation of the said United States Warehouse Act and the regulations promulgated thereunder, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

LESTER M. SACK,
Assistant United States Attorney.

4 Third Count

And the grand jurors aforesaid, on their oath aforesaid, do further present, that the said Fred Hastings and J. B. Barner, about or on the 15th day of December, in the year 1934, in the Delta division of said district, and within the jurisdiction of said court, at the city of Clarksdale, in Coahoma County, Mississippi, did knowingly, wilfully, and unlawfully and without any authority of law, remove and steal from and out of the Federal Compress and Warehouse Company, Clarksdale, Mississippi, being the warehouse of said Federal Compress and Warehouse Company known and designated as Plant No. 2, said warehouse being then and there a duly licensed warehouse under and pursuant to the provisions of the United States Warehouse Act, certain agricultural products then and there stored and on storage in said warehouse, to wit: a certain bale of cotton number 554506, for which said bale of cotton a licensed warehouse receipt had theretofore been issued by said Federal Compress and Warehouse Company, the removal and stealing of said cotton from said licensed warehouse being then and there contrary to and in violation of the said United States Warehouse Act and the regulations promulgated thereunder, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

LESTER M. SACK,
Assistant United States Attorney.

No. 2671. District Court of the United States for the Delta Division of the Northern District of Mississippi. The United States vs. Fred Hastings and J. B. Barner (Coahoma County). Indictment. Vio. sec. 270, tit. 7, U. S. Code. A true bill. J. E. Houston, Sr., Foreman.

[File endorsement omitted.]

5

In United States District Court

No. 2671

UNITED STATES OF AMERICA, PLAINTIFF

vs.

FRED HASTINGS and J. B. BARNER, DEFENDANTS

Demurrer

Filed Feb. 4, 1935

DEMURRER OF FRED HASTINGS TO COUNT ONE OF THE INDICTMENT

Now comes Fred Hastings, defendant in the cause above, and demurs to Count One in the indictment against him and, as grounds for demurrer, says:

I

The said Count One charges no offense against the laws of the United States of America.

II

Section 270, title 7 of the United States Code Annotated, being the section upon which the indictment is based, is unconstitutional in that it no power has been delegated to the United States by the Constitution authorizing it to make it an offense against the United States Government to steal or remove a bale of cotton from a cotton warehouse such as described and referred to in the indictment.

III

It is not charged in the indictment that the cotton in question was in Interstate Commerce at the time it is alleged that it was removed and stolen.

6

IV

The indictment does not charge that the cotton referred to was the personal property of another.

V

The indictment does not charge that the cotton was of any value.

VI

The indictment fails to charge that the cotton was converted to the use of the defendants, or either one of them.

VII

The indictment fails to allege the ownership of the property and fails to charge any intent to defraud the owner thereof.

VIII

The indictment is so vague and indefinite it does not inform the defendant of the charge against him.

DEMURRER OF FRED HASTINGS TO COUNTS TWO AND THREE OF THE INDICTMENT

The defendant, Fred Hastings, assigns as grounds of demurrer to the second and third counts, the same as hereinabove set out to Count One.

BREWER & MONTGOMERY,
ED. C. BREWER,
Attorneys for Defendant Fred Hastings.

[File endorsement omitted.]

7 In United States District Court for the Delta Division of the Northern District of Mississippi

No. 2671–CRIM.

UNITED STATES OF AMERICA, PLAINTIFF

vs.

FRED HASTINGS AND J. B. BARNER, DEFENDANTS

Judgment

This cause this day coming on to be heard upon demurrer of Fred Hastings to Count One, Two, and Three of the indictment in this cause, being all of said counts therein contained, and the court having considered said demurrer and being of the opinion that it is well taken and should be sustained; therefore

It is by the court ordered and adjudged that the said demurrer to the said three counts to the indictment be and the same is hereby sustained, to which action of the court in sustaining the demurrer, the United States of America in open court duly excepted, which exception is by the court hereby allowed,

Ordered and adjudged this the 4th day of February, 1935.

ALLEN COX,
District Judge.

Entered.
M. B. 6, page 172.

8 In United States District Court

[Title omitted.]

Judge's certificate as to grounds for sustaining demurrer

I hereby certify that on the 4th day of February 1935 an order was entered by the court in this cause sustaining a demurrer to each

count of the indictment of the defendant, Fred Hastings, and that the grounds for sustaining the said demurrer were as follows:

(1) That said indictment fails to charge any offense against the laws of the United States;

(2) That the indictment fails to charge that the cotton alleged to have been removed and stolen was the property of any person;

(3) That the indictment fails to allege the name of the owner of said cotton, and does not charge any intent to defraud the owner thereof;

(4) That the indictment does not allege the value of the cotton alleged to have been removed and stolen, or that the cotton was of any value;

(5) That section 270, title 7, of the United States Code, being the section under which the indictment is drawn, is unconstitutional, in that, Congress is without authority under the Constitution to make it an offense against the laws of the United States to remove agricultural products from a Federal licensed warehouse as alleged in the indictment.

This the 21st day of February 1935.

ALLEN COX,
District Judge.

Ent. M. B. 6, page 191.

9 In United States District Court

[Title omitted.]

Petition for appeal to the Supreme Court of United States

Filed March 4, 1935

Comes the United States of America, plaintiff herein, and states that on the 4th day of February 1935, a demurrer of the defendant, Fred Hastings, to each and every count of the indictment herein was by the court sustained, and the plaintiff feeling aggrieved at the ruling of said district court in sustaining said demurrer, prays that it may be allowed to appeal to the Supreme Court of the United States for a reversal of said judgment and order, and that a transcript of the record in this cause duly authenticated, may be sent to said Supreme Court of the United States.

Petitioner submits and presents to the court herewith a statement showing the basis of the jurisdiction of the Supreme Court to entertain an appeal in said cause.

UNITED STATES OF AMERICA,
By LESTER G. FANT,
United States Attorney,
Northern District of Mississippi.

[File endorsement omitted.]

13 In United States District Court

[Title omitted.]

Assignments of errors

Filed March 4, 1935

Comes the United States of America, plaintiff herein, by Lester G. Fant, United States attorney for the northern district of Mississippi, and avers that in the record proceedings and judgment herein there is manifest error, and against the just rights of said plaintiff in this, to wit:

1. That the court committed material error against plaintiff in sustaining the demurrer of the defendant, Fred Hastings, to each and every count of the indictment.

2. That the court committed material error against plaintiff in sustaining said demurrer and holding that each and every count of the indictment was defective because of failure to charge that the agricultural products alleged to have been stolen was the property of any person.

3. That the court committed material error against plaintiff in ruling that each and every count of said indictment was defective because of failure to allege the name of the owner of the cotton alleged to have been removed and stolen, and not charging any intent to defraud the owner thereof.

4. That the court committed material error against plaintiff in holding each and every count of the indictment defective because of failure to allege the value of the cotton alleged to have
14 been removed and stolen, and that the cotton was of any value.

5. That the court committed material error against plaintiff in holding that section 270, title 7, of the United States Code, being the section under which each count of the indictment is drawn, is unconstitutional, in that, Congress was without authority under the Constitution to declare it an offense against the laws of the United States to remove agricultural products from a Federal licensed warehouse as alleged in the indictment, and as defined in said section.

Wherefore, for all of the above information appearing on the face of the record proceedings and judgment herein plaintiff avers that material error was committed prejudicial to it in this cause, and prays that the judgment of the District Court be reversed.

This the 4th day of March, 1935.

LESTER G. FANT,
United States Attorney.

[File endorsement omitted.]

15 In United States District Court

No. 2671

UNITED STATES OF AMERICA

vs.

FRED HASTINGS, ET AL.

Order allowing appeal to Supreme Court of United States

This cause having come on this day before the court on the petition of the United States of America, plaintiff in the above-entitled cause, praying an appeal to the Supreme Court of the United States for a reversal of the judgment herein sustaining a demurrer of the defendant, Fred Hastings, to each and every count of the indictment in said cause, and that a duly certified copy of the record of said cause to be transmitted to the Clerk of the Supreme Court of the United States, and the court having heard and considered said motion, together with plaintiff's statement showing the basis of the jurisdiction of the Supreme Court to entertain an appeal in said cause, the same having been duly filed with the clerk of this court, it is, therefore, by the court ordered and adjudged that the plaintiff herein, the United States of America, be, and it is hereby, allowed an appeal from the order and judgment of this court in sustaining the demurrer of the defendant, Fred Hastings, to the indictment to the Supreme Court of the United States, and that a duly certified copy of the record of said cause be transmitted to the Clerk of the Supreme Court. It is further ordered that the United States of America be, and it is hereby, permitted a period of forty days from the date hereof in which to file and docket said appeal in the Supreme Court of the United States.

This the 4th day of March, 1935.

ALLEN COX,
District Judge.

Ent. M. B. 6, page 193.

17 [Citation in usual form showing service, on Ed C. Brewer, omitted in printing.]

18 In Supreme Court of the United States

Praecipe for transcript of record

Filed March 25, 1935

To the clerk of the United States District Court for the Northern District of Mississippi:

The appellant hereby directs that in preparing the transcript of the record of this cause in the United States District Court for the

Northern District of Mississippi, in connection with its appeal to the Supreme Court of the United States, that you include the following:

1. Indictment.
2. Demurrer.
3. Judgment sustaining demurrer.
4. Certificate of district judge stating reasons for sustaining demurrer.
5. Petition for appeal to the Supreme Court.
6. Statement of jurisdiction of Supreme Court.
7. Assignment of errors.
8. Order allowing appeal.
9. Notice of service on appellee of petition for appeal, order allowing appeal, assignment of errors, and statement as to jurisdiction.
10. Citation.
11. Praecipe.

LESTER G. FANT,
United States Attorney, Northern District of Mississippi,
Counsel for Appellant.

Service of the foregoing praecipe acknowledged this the 23 day of March, 1935.

BREWER & MONTGOMERY,
By ED C. BREWER,
Counsel for Appellee.

[File endorsement omitted.]

19 [Clerk's certificate to foregoing transcript omitted in printing.]

20 In Supreme Court of the United States

Statement of points relied upon and designation of entire record for printing

Filed May 7, 1935

Pursuant to Rule 13 of this Court, the appellant states that it intends to rely on all the points set out in its assignment of errors.

The appellant deems the entire record, as filed in the above-entitled cause, necessary for the consideration of the points relied upon.

STANLEY REED,
Solicitor General.

[File endorsement omitted.]

(Endorsement on cover:) File No. 39,498. N. Mississippi, D. C. U. S. Term No. 22. The United States of America, appellant, vs. Fred Hastings. Filed April 12, 1935. File No. 22. O. T. 1935.

U. S. GOVERNMENT PRINTING OFFICE, 1935